IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.MC.No. 3170 of 2007()

SC 1253/05 OF 1ST ADDL. ASST. SESSIONS COURT, TRIVANDRUM

PETITIONER: ACCUSED:

K.P.MAHESHKUMAR AGED 55,
S/O.PEETHAMBARAN, S.I. OF POLICE,(RETIRED),.
KAZHAKKOOTTAM RESIDING AT "THIRUVATHIRA",
T.C.17/1548(4), CHENGALLORE, POOJAPPURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS: COMPLAINANT:

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1. VASANTHA, W/O.LATE SURENDRAN,
ALIAVOORKONATH HOUSE, KANJICKAL,
POWDILKKONAM, THIRUVANANTHAPURAM.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3170 of 2007

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Dated this the 26th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution for the offence punishable under Section 304(ii) I.P.C. The allegations relate to the death of a person in custody on 19.12.2006. It is alleged that such death was on account of custodial torture of the deceased by the petitioner while he was in his custody. Complaint was filed by the wife of the deceased alleging commission of the offence punishable under Section 304(ii) I.P.C. on 25.10.2000. Committal proceedings was registered by the learned Magistrate. Order of committal was passed. Cognizance was taken by the learned Sessions Judge. Charges have already been framed. The matter stands posted for trial.

2. It is at this stage that the petitioner has come to this Court. He prays that the proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C.

3. What is the reason? The short contention that is raised before me in this Crl.M.C. is that the proceedings are liable to be quashed in as much as cognizance taken offends the provisions of Section 64(3) of the Kerala Police Act.

4. The nature of protection that is available to a member of a police force in the light of Section 64(3) of the Act had come up for consideration of the Supreme Court in **Unnikrishnan** v. **Alikoya** (2000 (3) KLT 483 483 (SC)). It has been made very clear in the said decision that the protection under Section 64(3) of the Police Act will be available only to a very narrow category of cases, where the act alleged must fall within the sweep of the expression "act done in pursuance of any duty imposed or authority conferred on him". The said decision makes it very clear that the protection under Section 64(3) is much narrower than the protection under Section 197 of the Cr.P.C. While protection under Section 197 Cr.P.C. would extend to acts done or "purported to be done" in the discharge of official duty, Section 64(3) of the Police Act cautiously limits the protection only to acts done in pursuance of "any duty imposed or authority conferred on him". In its lucid decision in **Unnikrishnan** the Supreme Court has stressed the importance of not adopting an unnecessarily wide interpretation for the stipulations in Section 64(3) of the Police Act.

5. In the light of the decision in **Unnikrishnan**, I have no hesitation to turn down the claim raised by the petitioner in this case for the protection of Section 64(3) of the Kerala Police Act. By no stretch of

imagination can it be held that the alleged act - alleged torture of the deceased in custody - was " an act done in pursuance of any duty imposed or authority conferred" on the petitioner by the Kerala Police Act or any other law for the time being in force.

6. This Crl.M.C. must, in these circumstances, fail and is hereby dismissed. I may hasten to observe that I have not intended to express any opinion on the acceptability of the allegations or the tenability of the contentions raised by the petitioner on merits.

(R. BASANT)
Judge

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